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REMARKS

A clean copy of all pending claims including claims 1, 2, 7, and 8 as amended above is attached as APPENDIX 1.

This amendment is responsive to the Office Action dated July 2, 2001. Reconsideration of claims 1, 2, and 5-12 is requested.

Summary of the Office Action

Claims 1, 7, and 9 stand rejected under 35 U.S.C. § 102 as being anticipated by Zuckerman and under 35 U.S.C. § 103 as being obvious over Zuckerman (US 5,404,577).

Claim 10 stands rejected under 35 U.S.C. § 103 as being unpatentable over Zuckerman.

Claims 2, 5, 6, 8, 11, and 12 were indicated as containing allowable subject matter.

The Prior Art of Record

The Zuckerman patent sets forth a head protective helmet 20 including an external shell 41 and an internal cap 42 (note FIGURE 2). An earcup 56 is pivotally supported below the external shell 41. Thus, the earcup 56 of Zuckerman is not mounted within an ear receiving zone of its external shell 41 because the external shell 41 does not cover the user's ears.

The earcup 56 includes a rigid outer shell 57, but the rigid outer shell 57 is not part of the external shell 41. Rather, it is suspended below it by a bracket 61 which includes a hinge pin 63 and torsion spring 64.

Zuckerman also discloses a flame retardant ear flap 106. First, the ear flap is not a part of the rigid external shell 41. Second, Zuckerman teaches against mounting housing 104 (FIGURE 9) inside the external shell 41 of the helmet. As stated at column 12, lines 11-30, one of the advantages of this embodiment is that it is "readily removable from the ear flap 106" to permit "rapid

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changing of the frequency on the transceiver 52". This permits several different teams of firefighters to be in close proximity without broadcasting on the same frequency. This section also points out that this permits ready changing of the battery as well as ready repair or replacement. The ON/OFF switch and the ON indicator are also incorporated in this unit. Thus, it is clear that Zuckerman wants this assembly to be readily removed by firefighters fighting a fire in an environment where it is unsafe to remove the protective helmet in its entirety.

The Claims Distinguish Patentably  
Over the References of Record

Claim 1 calls for the case which holds the pick-up and speaker to be mounted inside the principle shell. By contrast, Zuckerman mounts case 56 below the principle shell 41. The case can be pivoted away from the ear (FIGURE 2) or can be attached to a flap 106 by VELCRO™ for easy removal from the vicinity of the ear. Thus, Zuckerman teaches against mounting the case 56 inside the principle shell in favor of hanging it or fastening it with VELCRO below the principle shell. Accordingly, it is submitted that claim 1 distinguishes patentably and unobviously over the references of record.

Claim 2, which was indicated as containing allowable subject matter, has been placed in independent form. Accordingly, it is submitted that claim 2 is now in condition for allowance.

Claim 7 emphasizes that the ear protection zones are defined in a rigid, lateral wall portion which is an integral part of the principle shell. By distinction, Zuckerman places the assembly 56 below the principle shell 41. Accordingly, it is submitted that claim 7 and claims 9 and 10 dependent therefrom distinguish patentably over the references of record.

Claim 8, which was indicated as containing allowable subject matter, has been placed in independent

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form. Accordingly, it is submitted that claim 8 is now in condition for allowance.

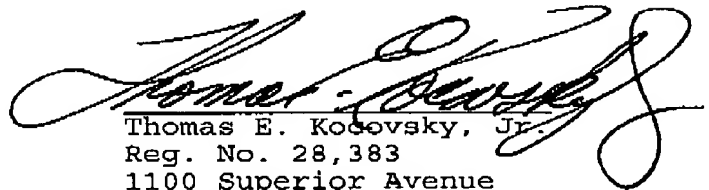
Claims 11 and 12 stand allowed.

Formal Drawings

The application was filed with Formal Drawings. An early indication that these drawings are acceptable is requested.

Respectfully submitted,

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CERTIFICATE OF FAXING

I hereby certify that this AMENDMENT C WITH APPENDIX 1 in connection with U.S. Patent Application Serial No. 09/101,601 is being transmitted by telefacsimile to the U.S. Patent and Trademark Office, Attention: Examiner H. LE, Group Art Unit 2643, at Telephone No. (703) 308-9051 on this 10<sup>th</sup> day of September, 2001.

By: Melary McNulty